



The Office of Vince Ryan
County Attorney

November 11, 2019

Members of the Commissioners Court
1001 Preston, 9th Floor
Houston, Texas 77002

Attn: Court Members

Re: Office of the County Attorney perspective on November 5, 2019 election

Dear Members of the Court:

The Harris County Attorney's Office works with and advises the County Clerk concerning election processes. This letter is to provide some context for the delay of the announcement of unofficial election returns that occurred during the tabulation of the election results for the November 5, 2019 Election.

The election plan which was originally adopted called for the delivery of the Judge's Booth Controllers ("JBCs") to ten rally points spread across the County where the Mobile Ballot Box. ("MBB") memory cards containing the digital files of the votes cast during the day would be removed under secure conditions and read. Once downloaded, the digital files would be transmitted by an internal secure transmission to Central Count, where they would be compiled for reports of unofficial results. The MBBs would then be transported to Central Count where the memory cards would be scanned a second time. The results of the two scans would be compared to assure that they were identical at which time the official count would be reported. This procedure is essentially the same as the procedures the County has been using for many years.

Our office was of the opinion that the procedure proposed for this election as well as in previous years was in full compliance with Tex. Elect. Code §127.1231, which requires a secure method of transmission. This was the same procedure that was used in the May 2019 election.

On October 23, 2019, pursuant to her authority to "prescribe additional procedures for voting systems in accordance with Section 122.001(c) of the Texas Election Code" and to "prescribe procedures for the use of a system to transmit results to the central counting station on election day" under Section 127.1231(b), the Secretary of State issued Election Advisory No. 2019-23.

The advisory required that any data transfers from a secured computer could only occur by one of the following methods:

- i. Single use DVD/CD,
- ii. Single use, disposable, removable USB thumb drive, or
- iii. Re-formatted, multi-use removable USB thumb drive.

Election Advisory No. 2019-23 Section 7(2).

The advisory permitted the electronic transmission of the results only after a "secondary copy of the results" was made so that the original memory cards containing the results would never be connected to a transmission device that was connected to the voting system. Election Advisory No. 2019-23 Section 7(5)(b). SOS Director of Elections Keith Ingram confirmed in a telephone call on November 4 that this meant that the prior method of transmitting the data via telephone lines connected to a device containing the original memory cards was not acceptable under this advisory because the telephone system is external to the voting system.

According to the County Clerk's Office, duplicating the memory cards at the polling locations or at the rally points would have required the purchase, testing, and installation of a minimum of ten duplicators which could not be obtained and installed during the period between the date of the advisory and the date of the election. The County Clerk advises that such equipment must first be tested to make sure it is compliant with the County's current voting machine equipment and hopes to have it ready for use for the March primary. If the tests are successful, the Clerk will be able to transmit unofficial results from the rally points to the central counting station in accordance with the procedures suggested by Election Advisory No. 2019-23 Section 7(5).

Other issues, which arose on Election Day, were similar to ones that have been encountered in the past. These matters include malfunctioning equipment and the failure of workers to follow procedures resulting in voters being given the wrong ballot style, conflicts between election workers and poll watchers, and the failure of election judges to appear for duty.

These issues are typical in all elections and are handled through the Clerk's Office with support from Election Strike Teams from our Office. For the most part, solutions were formulated and instituted on the spot with as little inconvenience to the voters as possible.

We are preparing a report about issues our Office encountered during the election and will be making that available to interested parties when it is completed.

Sincerely,

VINCE RYAN
County Attorney

By: 

Robert Soard
First Assistant

CC: Diane Trautman, Harris County Clerk